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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/882,485

06/15/2001

Jay H. Connely

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8135

7590

06/29/2006

James Y. Go  
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EXAMINER

VAN HANDEL, MICHAEL P

ART UNIT

PAPER NUMBER

2623

DATE MAILED: 06/29/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/882,485	<b>Applicant(s)</b> CONNELLY, JAY H.	
	<b>Examiner</b> Michael Van Handel	<b>Art Unit</b> 2623	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 10 April 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1 and 81-103 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 81-103 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 4/10/2006 has been entered.

### ***Response to Amendment***

1. This action is responsive to an Amendment filed 4/10/2006. Claims **1, 81-103** are pending. Claims **1, 82, 86, 89, 91, 93-95, 97, 99, 102** are amended. Claims **2-80** are canceled. The examiner hereby withdraws the objection to claim **95** in light of the amendment. The examiner further hereby withdraws the rejections of claims **82, 86, 93, and 94** made under 35 USC § 112 in light of the amendments.

### ***Response to Arguments***

1. Applicant's arguments filed 4/10/2006 with respect to claims **1, 91, 95, and 99** have been considered, but are moot in view of the new ground(s) of rejection.

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims **1, 81, 83, 84-92, 95, 96, 98-101, 103** are rejected under 35 U.S.C. 102(b) as being anticipated by Payton.

Referring to claims **1, 88, 89, 91, 95, 99, and 100**, Payton discloses a method/machine-readable medium/system/apparatus, comprising:

- broadcasting first content descriptors to one or more clients, the first content descriptors describing the content for broadcast (col. 3, l. 2-6 & col. 5, l. 6-10);
- prioritizing the content in response to a feedback received from the one or more clients (col. 3, l. 13-14 & col. 5, l. 22-24), wherein the feedback is automatically generated transparent to the one or more clients based on an amount of content consumed by the one or more clients (col. 6, l. 41-42, 48-50);
- broadcasting second content descriptors, the second content descriptors describing the prioritized content for broadcast (col. 3, l. 15-17; col. 6, l. 1-9, l. 67; & col. 7, l. 1-3);  
and
- broadcasting the prioritized content to the one or more clients (col. 3, l. 14-15; col. 5, l. 24-26; & col. 7, l. 3-7).

Referring to claims **81, 92, 96, and 101**, Payton discloses the method/machine-readable medium/system/apparatus of claims 1, 91, 96, and 99, respectively, wherein the feedback

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received from the one or more clients is received in a batch (the examiner notes that by sending the subscriber profile data in response to a periodic trigger, the data is sent in a batch)(col. 7, l. 65-67 & col. 8, l. 1-4).

Referring to claims **83** and **90**, Payton discloses the method of claim 1, further comprising updating one or more demand data tables at the one or more clients in accordance with the first and second content descriptors (col. 3, l. 15-17; col. 6, l. 67; & col. 7, l. 1-3, 61-65).

Referring to claim **84**, Payton discloses the method of claim 83, further comprising selectively storing content in accordance with the one or more demand data tables (col. 6, l. 1-4 & col. 8, l. 26-37).

Referring to claim **85**, Payton discloses the method of claim 84, further comprising updating the one or more demand data tables by the one or more clients (the examiner notes that the list of recommended items is updated in response to user ratings/usage. See the citations noted with regard to claim 1 above).

Referring to claims **86**, **98**, and **103**, Payton discloses the method/system/apparatus of claims 1, 95, and 99, respectively, further comprising filtering the content received from a server based on the content the one or more clients are interested in (col. 8, l. 26-36).

Referring to claim **87**, Payton discloses the method of claim 1, wherein the content first and second content descriptors include metadata to describe the content and the prioritized content (the examiner notes that data describing the transmitted items is necessary and inherent to Payton, in order to allow a subscriber interface 58 to display the list of recommended items)(col. 6, l. 7-9, 26-29, 67 & col. 7, l. 1-3).

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims **82, 93, 94, 97, 102** are rejected under 35 U.S.C. 103(a) as being unpatentable over Payton.

Referring to claims **82, 93, 97, and 102**, Payton discloses the method/machine-readable medium/system/apparatus of claims 1, 91, 97, and 99, respectively. Payton further discloses that subscriber profiles are communicated between the central distribution server and the subscribers over a low bandwidth back channel (col. 3, l. 2-6 & col. 6, l. 51-58). Payton still further discloses that the local server 28 sends new subscriber profile data in response to a periodic trigger (col. 7, l. 65-67 & col. 8, l. 1-4). Payton does not disclose staggering the sending of feedback to a server by one or more clients, wherein the staggering is based on a last time each of the one or more clients sent feedback to the server; however, the examiner takes Official Notice that it is well known within the prior art to stagger the sending of information across a network to minimize network congestion. It would have been obvious to one of ordinary skill in the art at the time that the invention was made to modify Payton's method of periodically sending subscriber profile data across a low bandwidth back channel to include staggering the sending of information, such as that taught by the prior art in order to minimize network congestion.

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Referring to claim **94**, Payton discloses that the one or more clients filter the content received from the server based on the content the one or more clients are interested in (col. 8, l. 26-36).

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Van Handel whose telephone number is 571.272.5968. The examiner can normally be reached on Monday-Friday, 8:00am-5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Grant can be reached on 571.272.7294. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

### **Note to Applicant**

Art Units 2611, 2614 and 2617 have changed to 2623. Please make all future correspondence indicate the new designation 2623.

Michael Van Handel

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Examiner  
Art Unit 2623

MVH

A handwritten signature in black ink, appearing to read 'Vivek Srivastava', with a stylized, sweeping flourish extending from the end.

**VIVEK SRIVASTAVA**  
**PRIMARY EXAMINER**